

# Major Moves: The Non-Compete Clause

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## **Section 14.1(e) of the Final Concession Agreement**

The development, redevelopment, construction, maintenance, modification, or change in the operation of any existing or new mode of transportation (including a road, street, or highway) that results in the reduction of Toll Revenues or in the number of vehicles using the Toll Road shall not constitute an Adverse Action. The opening of a Competing Highway shall constitute a Compensation Event with respect to which Concession Compensation shall be payable on or before March 15 in an amount equal to actual decrease in net income suffered by the Concessionaire during the preceding calendar year as a sole and direct result of the Competing Highway.

## **Definitions: from Page 4 of the Final Concession Agreement:**

**“Comparable Highway”** means a divided four or more lane controlled access interstate quality highway with interchanges, interstate quality bridges or combination or portion thereof.

**“Competing Highway”** means a newly-constructed comparable highway which is built by or on behalf of the State during the Term which is at least twenty (20) continuous miles of which is within ten (10) miles of the Toll Road. In addition, the existing US 20 shall be considered a “Competing Highway” if, on or before the fifty-fifth (55<sup>th</sup>) anniversary of the Closing Date, it is expanded or improved by or on behalf of the State so that it becomes a Comparable Highway and at least twenty (20) continuous miles of such highway (all of which is Comparable Highway and none of which was Comparable Highway on the Effective Date) is within ten (10) miles of the Toll Road. The existing US 20 shall not be considered a “Competing Highway” notwithstanding any future improvement and/or expansion to make it a Comparable Highway so long as the improvement or expansion which otherwise makes it a Competing Highway is not completed prior to the fifty-fifth (55<sup>th</sup>) anniversary of the Closing Date.

## **Summary:**

**Indiana cannot build a new interstate quality highway of more than 20 miles within 10 miles of the Toll Road without compensating the Concessionaire for its losses.**

**The lease does not limit the ability to build, upgrade, maintain, or operate all roads in the area – unless it involves upgrading a road to interstate quality for more than 20 miles.**

**Indiana can upgrade US 20 to interstate quality, if necessary, after the 55<sup>th</sup> anniversary of the closing of the lease agreement without compensating the Concessionaire.**

## **Questions about the Non-Compete Clause:**

**Can Indiana fill potholes, add new lanes, and build new bridges on US 20 and other roads?**

Yes, those items would not upgrade US 20 or any other road to interstate quality standards for more than 20 miles.

**Could Indiana build an interstate quality bypass around an area on US 20– if need be?**

Yes, as long as the bypass is less than 20 continuous miles.

**Will the non-compete limit the State’s ability to add new lanes to the Borman Expressway?**

No, the Borman Expressway is an existing highway and can be upgraded, maintained, and improved as needed.

**Will the non-compete limit the development of mass transit and other forms of transportation?**

No. The non-compete only applies to the construction of a new interstate quality highway.